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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 566

CHARLES R. PIERCE, JULIAN EATON AND HAYFORD O. ENWALL, AS DIRECTORS AND TRUSTEES OF ROYAL CITRUS GROVES COMPANY, A DISSOLVED FLORIDA CORPORATION, ET AL., *Petitioners,*

vs.

FULLER WARREN, GOVERNOR, NATHAN MAYO, COMMISSIONER OF AGRICULTURE, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

The petitioners herein, above referred to, respectfully pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of Florida entered in the above entitled case on October 20, 1950.

Opinion Below

The opinion of the Supreme Court of Florida (Record, pp. 37-41) is reported in 47 So.2d 857.

Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257. On January 19, 1951,

the time within which to file a petition for a writ of certiorari in this cause was extended to and including February 19, 1951, by an order signed by Associate Justice Black.

Statement

On December 4, 1896, the W½ of NW¼ of Section 4, Township 55 South, Range 41 East, T. M., Florida, was patented to the State of Florida pursuant to the provisions of the Act of Congress approved September 28, 1850, as swamp and overflowed land, then unsurveyed, after said area had been duly selected on behalf of the said State as swamp and overflowed land and such selection had been duly approved by the Secretary of the Interior and the issuance of such patent requested by the Governor of Florida. More than fourteen years thereafter the State of Florida by its Trustees of the Internal Improvement Fund conveyed the same to one Richards by deed dated June 21, 1911, for a valuable consideration, and thereafter said Richards for a valuable consideration conveyed and said Richards thereafter conveyed the same to others, of whom a predecessor of petitioners received a deed describing the SW¼ of NW¼ of said Section 4, and in December, 1931, the Royal Citrus Groves Company received from said Trustees of the Internal Improvement Fund of the State of Florida a quit-claim deed to certain reservations mentioned in said deed of 1911 to said Richards, the said reservations having related to certain mineral rights.

Apparently no official survey was made of said area until a survey was made by an engineer from the General Land Office whose plat of survey was filed therein on or about January 18, 1924 based upon the examination of the area made in 1922 and this was followed by a survey which the said Trustees of the Internal Improvement Fund caused to be made in 1949, both of which surveys said Trustees on

the Internal Improvement Fund claim showed no swamp and overflowed lands in said SW¼ of the NW¼ of said Section 4.

Meanwhile, in the year 1948—more than fifty years after the issuance of said patent in 1896 for swamp and overflowed land and fully thirty-seven years after the issuance of the deed to said Richards—without any previous demand and without any tender of the return of the consideration paid for said deed, the said Trustees of the Internal Improvement Fund brought suit in the Circuit Court, in Dade County, Florida, praying that they should be decreed the owners in fee simple of said SW¼ of NW¼ of said Section 4 and that the title thereto should be forever quieted and confirmed in them and that all rights, titles, interests and claims of the defendants therein be forever canceled and decreed to be null and void.

Notwithstanding undisputed testimony given on the trial of said suit that the hurricane of 1926 greatly affected the general area (R. 27) and the plaintiff's amended bill of complaint asserted that under the patent "dated December 4, 1896, issued pursuant to the provisions of said Swamp and Overflowed Land Act to the State of Florida, the State of Florida acquired title to the swamp and overflowed lands in the W½ of NW¼ of said Section 4" (R. 3), and no evidence of the condition of the area on September 28, 1850 was produced to show that it was not then and on September 28, 1850 swamp and overflowed land, the plaintiffs having attempted to show by means of surveys made in 1922-1924 and in 1949 (R. 4-5, 23-24)—thus made respectively more than 70 and 98 years later than the date of the approval of the Swamp and Overflowed Land Grant Act of September 28, 1850—said Circuit Court (a State Court of the State of Florida) found and decided that it had jurisdiction over the subject

matter of said suit and that the said surveys (of 1922-1924 and 1949) have established the boundaries of the swamp and overflowed land and sovereignty land (R. 31) and that "the land involved in this suit is sovereignty land of the State of Florida" (R. 30), while also finding that "the claims of the defendants are based on a State grant of unsurveyed swamp and overflowed land bordering on Biscayne Bay, a navigable body of water" (R. 30). And said Circuit Court decreed that "the plaintiffs are the owners in fee simple of the land involved in this suit", being said SW¼ of NW¼ of Section 4, Township 55 South, Range 41 East), and that the title of plaintiffs t osaid land be "for ever quieted and confirmed in them," and that all rights, titles, interests, liens, claims and demands of the defendants be "forever cancelled and decreed to be null and void". (R. 31).

From said decree of said Circuit Court the defendants appealed to the Supreme Court of the State of Florida, which latter Court affirmed the said decree (R. 41) and thereafter and on October 20, 1950 denied a petition for rehearing and issued its mandate to said Circuit Court (R. 48-49). In its opinion, said Supreme Court of Florida asserted that said surveys (of 1922-1924 and 1949) "established that there were no 'swamp and overflowed lands', in the area" under consideration and that the basic question to be determined is "whether the trustees attempted to convey 'sovereignty lands', which they could not have done before the enactment of Chapter 7304, Laws of Florida, Act of 1917, or did deed 'swamp and overflowed lands', which they were empowered to do." (R. 38), and, also, that if the property was in fact tideland in 1911, there was no power in the trustees to convey it, and the deed attempting to do so was void, and that "When the sale was made, it became the duty of the state to survey the

property to fix its character and boundaries" and that this was not done and a perfect title could not vest in appellants' predecessor to unsurveyed public land until the land has been identified by a survey authorized by law. (R. 41). Said opinion of the Florida Supreme Court appears to have disregarded or failed to mention certain of the errors asserted and relied upon by the defendants-petitioners, such as the order of said Circuit Court in striking out the last paragraph of the answer of Coconut Grove Exchange Bank to the amended complaint alleging said patenting of said land to the State of Florida and the execution of the deed to said Richards, reciting a consideration of $5 per acre paid by the grantee and the quit claim deed from the Trustees of the Internal Improvement Fund to Royal Citrus Groves Company quit-claiming all right, title, interest, claim and demand arising out of certain reservations in said deed to said Richards (R. 19-20) and likewise the order of said Circuit Court in striking out certain allegations of the answer to the said amended complaint of the other defendants, which allegations asserted that the area or land here under consideration is located below the low water mark of the shore of the Florida mainland in waters open to the Atlantic Ocean "with no 'inland waters' nor 'landlocked harbors' involved," so that fixing the boundary line between the navigable sea and landlocked harbors would require Court proceedings in which the State and the United States are parties and also asserted that said plaintiffs (Trustees of the Internal Improvement Fund) claim the area under the high water mark in the SW¼ of NW¼ of said Section 4 their deed to said Richards in 1911 described the "W½ of NW¼ of said Section 4 and this suit should be dismissed for absence of the persons claiming the NW¼ of said NW¼ of said Section 4 as necessary parties to the controversy (R. 13, 16).

And the Florida Supreme Court also appears to have disregarded various grounds for rehearing set forth in the petition therefor (R. 41-48), including the ground that public policy and the avoidance of uncertainty of titles and possibility of future litigation the Trustees should be required to estabish by clear and positive proof that the area in question was at all times (from 1896 through 1911) sovereignty land; and, also, that no testimony or other evidence was offered to prove that the plat of the 1922 survey (plaintiffs' Exhibit 2) or the map of the State's 1949 survey (plaintiffs' Exhibit 5) delineated the boundaries as they existed in 1911, the latter survey revealing that some of the area in the northwest portion is "filled land," the material for which fill may or may not have come from the adjoining area; and, also, the lack of any evidence that the Trustees had any information in 1949 that the land in question was not swamp land, while the United States pronounced it swamp when the patent was issued in 1896 and the Trustees pronounced it swamp in 1911 when the deed to said Richards was issued by them; and, also, the execution and delivery by the Trustees in 1931 of the quit-claim deed conveying their right, title and interest arising out of certain reservations contained in the deed to said Richards of June 21, 1911, which quit-claim deed recognized the pronouncement of the 1911 deed that the lands were swamp; and, also, the lack of any evidence offered by the Trustees in the record to show marks on the ground or upon local objects which would establish or determine the true character of the area in 1896 and in 1911; and, also, that the burden was on the Trustees to prove by competent evidence that by the nature, characteristics and conditions of the lands in 1911 they were sovereignty lands; and, also, that the Trustees must establish and rely on the strength of their title and not rely on any alleged weakness of the

title of the present record title holder; and, also, that the Trustees should have produced the record of the selection of the land under the Swamp and Overflowed Land Act of September 28, 1850—which was a grant *in praesenti*—the certification by the General Land Office of the Department of the Interior and the patent from the United States to the State of Florida.

As shown by the transcript of the record (R. 22-30) the Trustees failed to produce and offer in evidence any records or proofs of facts relevant to the issue made or originated prior to the 1922-1924 survey.

In view of the foregoing, the wording of the following applicable statutes is pertinent:

The Swamp and Overflowed Land Grant Act of September 28, 1850, 43 USCA, Sections 982, 983 and 984, the relevant portions of which are as follows:

"§ 982. Grant to States to aid in construction of levees and drains.

"To enable the several States (but not including the States of Kansas, Nebraska, and Nevada) to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein—the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A. D. 1850, are granted and belong to the several States respectively, in which said lands are situated: * * * (R. S. § 2479.)".

"§ 983. Lists and plats of lands, for governors of States.

"It shall be the duty of the Secretary of the Interior, to make accurate lists and plats of all such lands, and transmit the same to the governors of the several States in which such lands may lie, and at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said

State therefor, conveying to said State the fee simple of said land.

"The proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the reclaiming said lands, by means of levees and drains. (R. S. § 2480.)"

"§ 984. Legal subdivisions mostly wet and unfit for cultivation.

"In making out lists and plats of the lands aforesaid all legal subdivisions, the greater part whereof is wet and unfit for cultivation, shall be included in said lists and plats, but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom. (R. S. § 2481.)"

And, in connection with the subject of the title to and disposal of areas known as sovereignty lands the wording of paragraph 2 of Section 3 of Article IV of the Constitution of the United States is important inasmuch as it reads as follows:

"Regulations concerning territory.—2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Questions Presented

1. Whether the Trustees of the Internal Improvement Fund of the State of Florida are barred and estopped, after the lapse of more than fifty years, from suing in a State Court of the State of Florida to have cancelled and held for naught a patent to the State of Florida from the United States under the Swamp and Overflowed Land Grant Act

of September 28, 1850 to land selected by said State as swamp and overflowed land and also after a lapse of more than thirty-five years to have cancelled and held for naught a deed from said land so previously patented to the State and thereafter sold to a private purchaser for a valuable consideration without proof of any fraud and without any tender or return of the consideration received by the State for said deed.

2. Whether a State Court of the State of Florida has jurisdiction over the subject matter of such a suit and may strike from the pleadings of the defendants allegations raising objections to the jurisdiction of such State Court and the absence of the United States as a party to such a suit (R. 13, 21, 31).

3. Whether in such a suit the State Courts of Florida may decide in favor of such plaintiffs, said Trustees of the Internal Improvement Fund, upon alleged surveys made more than seventy years later than 1850 and also more than eleven years later than said deed conveying said swamp land so patented to the State in consideration of the payment of a valuable consideration by a private purchaser and upon mere allegations or assertions of said Trustees or some of them, such as the Commissioner of Agriculture of the State of Florida, respecting such land, but without any proof of actual facts and conditions existing on September 28, 1850 showing and establishing that said land was not then swamp and overflowed land or that it was then tidal or sovereignty land (R. 23-29).

4. Whether the determination by the Secretary of the Interior that a certain area in Florida is swamp and overflowed land and was such swamp and overflowed land on September 28, 1850, may be set aside, after the lapse of more than fifty years since the issuance of patent to the State of Florida describing such area as swamp and over-

flowed land, and whether such determination by the Secretary of the Interior is conclusive, in the absence of any claim or proof of fraud.

5. Whether the Trustees of the Internal Improvement Fund of the State of Florida may sue in a Florida State Court to reopen, change or modify the boundaries and matters set forth in a public land patent.

6. Whether the Trustees of the Internal Improvement Fund of the State of Florida may sue in a Florida State Court to have determined and decreed as sovereignty land an area previously patented to the State of Florida as swamp and overflowed land, in which suit the United States is not a party. (R. 13).

7. Whether the State of Florida when admitted to the Union by Act of Congress approved March 3, 1845 became the owner of all lands under navigable waters and all tidelands (R. 37).

8. Whether land determined in 1896 by the Secretary of the Interior to have been swamp and overflowed land on September 28, 1850, may be decreed by a Florida State Court to have been sovereignty land in 1911 in a suit brought in 1948 without any proof of fraud or even proof of any actual examination and survey of said land prior to 1922 (R. 23-25).

9. Whether a complete and perfect title could be vested in the purchaser from the State of an area previously patented to the State of Florida as swamp and overflowed land prior to the actual survey of said area (R. 41).

10. Whether the condition and character of the area involved in the instant case on any other date than September 28, 1850, may be held to be controlling and decisive in such a suit.

Inasmuch as it is believed by the petitioners that the foregoing questions severally involve the construction or

effect of various provisions of the Constitution and statutes of the United States, and especially public land laws they contend that this Honorable Court has jurisdiction to review the judgments or decrees of the Florida State Courts in question; and in this connection they call attention to the provisions of paragraphs 1 and 2 of Section 2 of Article III of the United States Constitution, of which the following portions are relevant:

"Section 2. Jurisdiction of Federal courts.—1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;" * * *

"Original and appellate jurisdiction of Supreme Court.—

"2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

From the foregoing and the matters disclosed by the record the petitioners herein urge the following

Reasons for Allowance of Writ Sought

1. The finding and decision of the Florida State Courts in the instant case that "the land involved in this suit is sovereignty land of the State of Florida" (R. 30) and that the State of Florida when it was admitted to the Union by Act of Congress approved March 3, 1845 "became the owner of all lands under navigable waters and all tidelands" (R. 37) is not only contrary to the provisions of said paragraph 2 of Section 3 of Article IV of the United

States Constitution, inasmuch as Congress has never granted such "soverignty lands" and "tidelands" generally to the State of Florida but it is in absolute disregard of and contrary to the rulings and decisions of this Honorable Court, as reference to the following recent decisions thereof reveals:

United States v. *California*, 332 U. S. 19;
United States v. *Louisiana*, 339 U. S. 699;
United States v. *Texas*, 339 U. S. 707.

It can be readily appreciated that to permit this erroneous decision of the Florida State Courts in the instant case to stand without correction can easily result in great injustice and loss.

2. In view of the great length of time which elapsed between the Swamp and Overflowed Land Grant Act of September 28, 1850 as well as the patent under said Act of the area in question to the State of Florida in December, 1896, and the commencement of the instant suit in 1948, the plaintiffs-appellees should have been held barred and estopped from maintaining such suit.

United States v. *McLaughlin*, 30 Fed. 147.

3. The Florida State Courts in the instant case seem to have disregarded the fact that the Swamp and Overflowed Land Grant Act of September 28, 1850 was a grant *in praesenti* (*United States* v. *Minnesota*, 270 U. S. 180, 227) and that the grant is the source of title to the area in question (*Peninsular Terminal Co.* v. *Pembroke*, 146 So. 249, holding that all titles depend upon grants and not upon proof or disproof of evidentiary facts).

4. The Florida State Courts in the instant case have disregarded the rule that a determination by the Secretary

of the Interior that certain lands were swamp and overflowed is conclusive and may not be set aside.

De Proft v. *Heydecker*, 131 N. E. 114; 297 Ill. 541;
French v. *Fyan*, 93 U. S. 169;
Kean v. *Calumet Canal Co.*, 190 U. S. 452.

5. The State Courts in the instant case disregarded the rule of de minimis non surat lex.

United States v. *Chandler Dunbar Co.*, 209 U. S. 447.

6. In the instant case Federal questions were involved which the Florida State Courts appear to have disregarded.

Chapman and Dewey Lumber Company v. *St. Francis Levee District*, 232 U. S. 186.

7. To permit the Trustees of the Internal Improvement Fund to retain the moneys received for their deed to Mr. Richards made in June 1911, and also to have said deed cancelled would be obviously inequitable.

8. Unless this Honorable Court shall grant this petition and correct the injustice done to petitioners by the decrees of the Florida State Courts in the instant case, the petitioners will be without remedy and suffer irreparable damage.

Conclusion

For the foregoing reasons and those appearing elsewhere in this petition it is respectfully submitted that this petition should be granted.

February, 1951.

CHARLES R. PIERCE,
Petitioner in Person, and
Attorney for Petitioners.

JOHN M. SUTTON,
Of Counsel.